



An
Bord
Pleanála

Inspector's Report

ABP-318252-23

Development	Construction of a new building for agricultural machinery maintenance, repair and associated site works. Note: Revised design to that approved under Reg. Ref. F18A/0653		
Location	Inch, Balbriggan, Co. Dublin		
Planning Authority Ref.	F23A/0055		
Applicant(s)	Kevin Woods Machinery Limited		
Type of Application	Permission	PA Decision	Grant Permission
Type of Appeal	First Party against condition	Appellant	Kevin Woods Machinery Limited
Observer(s)	None		
Date of Site Inspection	12 th February 2024	Inspector	Michael Walsh

Context

1. Site Location/ and Description

The site of this development fronts on to a minor road running northwest from the village of Balrothery. This road joins the R122 Balbriggan-Naul road close to Junction 6 on the M1 Motorway, approximately 1.5 km from this site. The layout of buildings on this site is as shown on the Site Layout Plan accompanying the submission of additional information. The main building is set back as shown and is used for storage of machinery. There is a large concreted area in front with direct access from the site entrance. There are some portakabins in front of this building. The main outdoor storage area is located close to the road frontage and on the northwestern side of the access road. The machinery includes conveyors and vegetable grading machinery. The site of the proposed building is currently cleared and there are further hard surfaced areas to the side of the main building.

There is a wide entrance to the site and some trees along the road frontage have been cut down. There is a dense line of evergreen trees alongside the southeastern site boundary. The pattern of development in the area is shown on plans of the area. This includes a substantial number of houses, also the clubhouse of a local cricket club. The minor road is of a mediocre standard and lacks footpaths and verges.

2. Description of development

The development is essentially as described in the published notices. Its floor space is stated to be 1,083 m² and the floor space of existing building(s) on the site to be 2,100 m². The site area is stated to be 1.6 Ha. There is an existing connection to public mains for water supply. There is an existing wastewater treatment system and it is proposed to upgrade this system to a new Klargester and percolation area. Surface water is proposed to be discharged to a new surface water soakaway. Additional information was submitted which included clarification of the nature of the uses on the site, a revised site layout plan and revised transportation details.

3. Planning History

Previous Application on Same Site

F18A/0653 Decision to grant permission made on 9.10.2019 for new showroom and office building and new machinery maintenance & repair building along with associated site works, subject to payment of a contribution of €143,304.

Other Previous Decisions noted in Grounds of Appeal

F19A/0365 (Appeal Ref. ABP-305771) Permission granted for extension to potato shed at Rathmooney, Lusk, subject to application of contribution condition at 50% of commercial rate on basis of nature of use.

F18A/0593 (Appeal Ref. ABP-304205) Permission granted for construction of production warehouse at M1 Business Park, Balbriggan, subject to reduction of contribution to allow for application of reduced rate to warehouse element of development and correction of erroneous use of residential rate.

F17A/0767 Permission granted for agricultural machinery shelter and associated site works at Balbriggan, not subject to a condition requiring payment of a contribution.

4. National/Regional/Local Planning Policy

The current development plan for the area of the Planning Authority is the Fingal Development Plan 2023-2029. This plan came into effect on 5.04.2023.

The current zoning objective applicable to this site is stated to be **RB** (Rural Business). The associated objective is expressed as “provide for and facilitate rural-related business which has a demonstrated need for a rural location.”

5. Natural Heritage Designations

The site of the proposed development is located in a rural area to the southwest of Balbriggan. European sites in North Fingal include Skerries Islands Special Protection Area and Rogerstown Estuary Special Protection Area and Special Area of Conservation. These areas are located close to or at the coast six or more km from the subject site.

Development, Decision and Grounds of Appeal

6. PA Decision

The decision in this case was to grant permission subject to thirteen conditions. These are of a type generally applicable to commercial developments and include requirements relating to vehicular access, drainage, water supply and control of construction activities. That of particular interest is no. 13, which is as follows:

Prior to Commencement of development the developer shall pay the sum of €102,614.25 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

7. First Party Appeal

- It appears that the application of the reduction for agricultural developments was inadvertently overlooked at planning stage and there is no record of the assessment of the contribution on the online planning system.
- The grounds of appeal are that, for the building to get planning permission, its use had to be rural-related and associated with the agricultural sector. The response to the additional information request and the stated vision for the *Rural Business* zoning confirm that food production is a major industry in Fingal and that Kevin Woods Machinery is a vital support service for local food producers. This situation was recognised by the Planning Department in the assessment of the previous application. It can also be inferred from comments in the current case by the planning officer on the response submitted to the request for additional information.
- It has been verified that the 2023 rate for industrial/commercial developments is €94.75 per m². Referring to exemptions set out in the Scheme, the appellant is seeking a 50% reduction in the contribution on the basis of the applicability of sub-section (I), which applies to buildings associated with the processing,

distribution, supply or sale of locally produced agricultural products. It is noted that, if the Board decided that sub-section (k) applied to agricultural buildings, the total exemption thereby arising would be acceptable to the appellant.

- Three examples of other decisions on contribution appeals are noted. In Reg. Ref. No. F18A/0593 the Board, in its appeal decision, concluded that the contribution scheme had not been properly applied in that a lower rate should have been applied to the warehouse element of the development. In Reg. Ref. No. F17A/0767, for an agricultural machinery shelter, it is evident from the Manager's Order that a conscious decision was made to omit a contribution condition. In Reg. Ref. No. F19A/0365 the Board, while agreeing with the Council that the contribution had been properly applied, noted that the contribution had been based on a 50% reduction in the commercial rate.
- The expression *from farm to fork* frequently used in the food industry is an indication of the involvement of the appellant company in this process. While the Planning Department concluded that the building is related to agriculture, the amount of the contribution does not reflect this conclusion. Sub-sections (k) and (l) of the exemptions listed in the Contribution Scheme apply to agricultural buildings and, whatever about the applicability of sub-section (k), sub-section (l) should have been applied in this case.

8. PA Response

The Planning Authority is of the opinion that the financial contribution has been correctly applied and requests the Board to uphold the decision of that authority.

9. Further Response on behalf of Appellant

- It has been acknowledged by the Planning Department that this is an agricultural building and should not have had a contribution applied; were it not an agricultural building, it would not have been permitted.
- There appears to be a slight "flaw" in the system due to the lack of a mechanism to alert the person calculating the contribution to the agricultural use of the building.

Environmental Screening

10. EIA Screening

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

11. AA Screening

Having regard to the modest nature and scale of development, its location in a rural area and the absence of connectivity to European sites, it is concluded that no Appropriate Assessment issues arise as the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

2.0 Assessment

2.1. Scope of Consideration

- 2.1.1 This appeal is expressed as being against a single condition in the Schedule of Conditions attached to the decision to grant permission for the development in question. This condition is numbered 13 in the schedule and demands the payment of a contribution towards expenditure incurred by the Planning Authority in respect of public infrastructure and facilities benefitting development in the area of the authority. It is set out in full in Section 6 of the Context section of this report.
- 2.1.2 The Board, in response to the receipt of the appeal, noted that the appeal related solely to the proper application of the development contribution scheme adopted under Section 48 of the Planning and Development Act 2000 (as amended) and that there were no other appeals against the decision. Arising from this, they informed the parties to the appeal that the provisions of Section 48(10)(b) and (c) apply to the appeal.
- 2.1.3 The applicable contribution scheme is the Fingal County Council Development Contribution Scheme 2021-2025. Levels of contribution per square metre of floor area are set out in the scheme. The rate per square metre of industrial/commercial

development is set at €76.69. This rate however is subject to revision to allow for indexation in accordance with the Society of Chartered Surveyors Ireland Tender Price Index. The October 2023 rate has been confirmed to be €94.75.

2.1.4 The scheme also provides for exemptions and reductions for certain categories of development. Those of possible relevance in this case are agricultural buildings, glasshouses, etc. (Article 11(i)(k)) and buildings associated with the processing, distribution, supply or sale of fruit, vegetables, etc. (Article 11(i)(l)).

2.1.5 Section 48(10)(a) of the Act states that no appeal shall lie to the Board in relation to a condition requiring a contribution to be paid In accordance with a scheme but Section 48(10)(b) allows an appeal to be brought on the basis that the terms of the scheme have not been properly applied. This essentially is the issue to be determined in this case. The position of the planning authority in relation to the rate per square metre is not questioned but the applicability of some of the exemptions and reductions is at issue.

2.2 General Comment on Proposed Development

2.2.1 Before dealing with the contribution issue, it would be appropriate to comment briefly on some aspects of this development. The stated purpose of the proposed building is to facilitate the storage of machinery currently stored in the open part of the site. It would facilitate the more efficient operation of the core business on the site. This development also includes proposals to upgrade the wastewater treatment and surface water disposal systems and a proposal to modify the entrance layout with the removal of trees along the road frontage to improve visibility.

2.2.2 One person made an observation to the planning authority on this proposed development but did not appeal the decision or make any observation to the Board. The observation expressed concerns regarding the extent of development, the treatment systems, sightlines and parking arrangements. The substance of this observation has been noted in the Planning Officer's Report but, having regard to the nature of this appeal, this observation does not fall within the scope of the Board's consideration of this appeal.

2.3 Context of Uses in Rural Fingal

- 2.3.1 North County Dublin, which coincides to a large extent with the functional area of Fingal County Council, is a highly productive agricultural area. There is intensive production of fruit and vegetables and associated distribution / supply systems. The land use requirements of these systems are reflected in the RB (rural business) zoning objective. The site of the proposed development is located in an area with this zoning objective. Permitted use classes related to this zoning objective include “agricultural machinery sales and/or maintenance”. The vision for this zoning objective, referred to in the Planning Officer’s Report, includes the phrase “support services for the local agricultural or horticultural sector”.

2.4 Exemptions and Reductions applicable to Contributions

- 2.4.1 Article 11 of the Contribution Scheme sets out a list of categories of development which are exempted from the requirement to pay contributions or may pay a reduced rate. Two of these categories have been referred to on the basis of possible relevance to the current case. Category (k) comprises agricultural buildings, glasshouses and poly tunnels used by persons engaged in farming. This category is exempt but it seems clear that the use of this site is for a business associated with the distribution of agricultural products but not for agricultural use as such. Category (l) comprises buildings associated with the processing, distribution, supply or sale of locally produced agricultural products and such buildings are subject to a 50% reduction in the commercial rate.
- 2.4.2 The proposed development comprises the construction of a building to facilitate the more effective operation of the main activity taking place on this site. This business has been operating on this site for some years and it is accepted by the Planning Authority that it is fully in compliance with the RB zoning objective, this being a recognition of the need to provide a location for the development of business within the rural area and directly related to the agricultural or horticultural sectors. This category is expressed in a general way. It can be taken to include buildings used for the storage and distribution of locally produced foodstuffs. In the current case the site is not used for the storage of foodstuffs as such but can reasonably be described as a “support service”, to use a term included in the *vision* related to the Zoning Objective. The wording of the category also refers to buildings “associated with” the

processing etc. of agricultural products. This processing etc. depends on the efficient operation of the machinery and equipment in use, and on necessary repairs and replacements as needs for these arise. In so far as the business on this site is orientated to the maintenance, repair etc. of such machinery and equipment, it seems reasonable to accept that this business is associated with the processing, distribution etc. of agricultural produce and therefore that the 50% reduction provided for in category (I) should be applied.

- 2.4.3 The suggestion is made in the appeal that category (I) of the Contribution Scheme was inadvertently overlooked by the Planning Authority and a further comment is made on behalf of the appellant that there is a lack of argument / justification for the opinion that the contribution was correctly applied. The role of the Board is to consider the planning issues arising in appeals and this does not include comment about how or why certain actions were or were not taken. To refer briefly to the Planning Officer's report, it is noted that the proposed development and intended uses are compatible with the RB land use zoning of the site and that they accord with the Fingal Development Plan 2023-2029.

2.5 General Practice in Assessing Contributions in Fingal

- 2.5.1 The appeal submission in this case lists three decisions with the purpose of highlighting inconsistencies in the application of contribution conditions. Referring briefly to these, no contribution was attached to a permission for an agricultural machinery shelter (Reg. Ref. No. F17A/0767). In the case of Reg. Ref. No. F18A/0593 (Appeal Ref. No. 304205-19) the Board held that the contribution condition had not properly applied in respect of part of the development. In the case of Reg. Ref. No. F19A/0365 (Appeal Ref. No. 305771-19) the Board agreed with the application of the 50% reduction in the contribution condition.
- 2.5.2 These cases give a broad indication of the manner in which contribution conditions are attached to developments in the Fingal area, with particular regard to developments associated with agricultural uses. The sample however is small and, in the absence of detailed study of the circumstances of each case, there is a need for some caution in seeking to draw firm conclusions from such a sample.

3.0 Recommendation

I recommend that, in accordance with the provisions of Section 48(10)(b) and (c) of the Planning and Development Act 2000, as amended, that condition no. 13 be amended to read as follow:

Prior to Commencement of development the developer shall pay the sum of €51,307.13 (updated at date of commencement of development, in accordance with changes in the Tender Price Index) to the Planning Authority as a contribution towards expenditure that was and/or that is proposed to be incurred by the planning authority in respect of public infrastructure and facilities benefiting development in the area of the Authority, as provided for in the Contribution Scheme for Fingal County made by the Council. The phasing of payments shall be agreed in writing with the planning authority prior to the commencement of development.

REASON: It is considered reasonable that the payment of a contribution be required in respect of the public infrastructure benefiting development in the area of the Planning Authority and which is provided, or which is intended to be provided by, or on behalf of the Local Authority.

4.0 Reasons & Considerations

The development proposed is associated with a business which acts as a support service for the agricultural and horticultural industry in North County Dublin. This business falls within the use class “agricultural machinery sales and/or maintenance”, which is specifically listed as a use class permitted in principle in areas with the RB (rural business) Zoning Objective. It is considered therefore that the exemption / reduction (I) provided for in the Fingal County Council Development Contribution Scheme 2021-2025, which states that buildings associated with the processing, distribution, supply or sale of fruit, vegetables or other products locally produced are subject to a 50% reduction in the commercial rate, should have been applied to the contribution.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Michael Walsh
Planning Inspector

21st February 2024